Contents

		Page	
DIGEST		i	1/A6
CHAPTER			
1	INTRODUCTION	1	1/A10
	Donated Federal real property	1	1/A10
	Real property acquired with grant funds	3	1/A12
	Value of grants and donated real property	4	1/A13
	Responsibiiities of FAA	4	1/A13
	Proposed legislation	5	1/A14
	Scope of review	6	1/B1
2	LAND NOT USED AS INTENDED	7	
	Nonairport use of land	7	1/B2
	Land not developed	17	1/B2
	Conclusions	19	1/B14
	Recommendations	20	1/C2
	Agency comments and our evaluation	20	1/C3
3	NEED TO IMPROVE AIRPORTS COMPLIANCE PROGRAM	22	1/C5
	FAA's compliance program	22	1/C5
	Inadequate recordkeeping	23	1/C6
	Required evaluations not performed	25	1/C8
	Lack of aggressive enforcement	27	1/C10
	Factors contributing to program ineffectiveness	27	1/C10
	A history of inaction	29	1/C12
	Conclusions	30	1/C13
	Recommendations	31	1/C14
	Agency comments and our evaluation	31	1/C14
APPENDIX			
I	Legislative authorizations, purposes, and selected policies applicable to airport land acquired with Federal participation	32	1/D1
II	Number of airports in FAA regions having obligations concerning land use.	34	1/D5

APPENDIX		Page	
III	Airports with nonsurplus land reviewed by GAO	35	1/D7
IV	Letter dated May 16, 1980, from the Assistant Secretary for Administration, Department of Transportation	36	1/D9

ABBREVIATIONS

FAA	Federal Aviation Administration
GAO	General Accounting Office

GAO/CED-80-84

BY THE U.S. GENERAL ACCOUNTING OFFICE

Report To The Secretary Of Transportation

COMPLETED

ORIGINAL

Misuse Of Airport Land Acquired Through Federal Assistance

The law specifies that State and local governments acquiring land through Federal grants and donations for airport use must agree to develop it for that purpose only. GAO found many cases where this was not being done. The land was being used for private residences, parks, commercial businesses, and golf courses. The Federal Aviation Administration is lax in protecting Federal interests in the land.

The Secretary of Transportation should require FAA to more effectively monitor and enforce the proper use of land acquired through Federal assistance. Where proper use is not obtained, the property should be reclaimed, the Government should be reimbursed, or reinvestment should be ensured.

LCD-80-84
AUGUST 13, 1980

For sale by:

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

Telephone (202) 783-3238

Members of Congress; heads of Federal, State, and local government agencies; members of the press; and libraries can obtain GAO documents from:

U S. General Accounting Office
Document Handling and Information
Services Facility
P.O. Box 6015
Gaithersburg, Md. 20760

Telephone (202) 275-6241

GAO
United States General Accounting Office
Washington, DC 20548

Logistics and
Communications
Division

B-197798

The Honorable Neil E. Goldschmidt
The Secretary of Transportation

Dear Mr. Secretary:

This report discusses the need for a more concerted effort by the Federal Aviation Administration to ensure that airport land is used appropriately and to better protect the public interest in federally supported airport property.

We made this review to determine whether public airport lands, acquired by direct grants of funds and by donations of Federal real property, are properly controlled and used in accordance with deed restrictions and applicable laws.

We discussed this report with Federal Aviation Administration officials, and their comments are incorporated where appropriate.

This report contains recommendations to you on pages 20 and 31. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the above-mentioned Committees, interested Members of the Congress, and the Director of the Office of Management and Budget.

Sincerely yours,

R. W. Gutmann

R. W. Gutmann
Director

GENERAL ACCOUNTING OFFICE
REPORT TO THE SECRETARY OF
TRANSPORTATION

MISUSE OF AIRPORT LAND ACQUIRED THROUGH FEDERAL ASSISTANCE

D I G E S T

Over the past 35 years, several billion dollars in Federal grants and donated real property have been used by State and local governments to acquire land for many of the Nation's public airports. Property deeds and applicable laws establish restrictions on the use of this land, which the recipient airport sponsors accept as obligations in exchange for the Federal assistance. If donated property is not appropriately used, the Federal Aviation Administration (FAA) can reclaim it on behalf of the United States. For grant acquired lands, FAA is required to assess the sponsor's continuing need and obtain reimbursement or reinvestment in other airport improvements if sale or other disposal of the land is requested.

LAND NOT USED FOR AIRPORT PURPOSES

Many sponsors at airports GAO reviewed were using land acquired with Federal assistance for other than airport purposes. Among the 72 airports GAO examined,

--20 were using land for nonairport purposes and

--16 had not developed or fully utilized the land for airport purposes. (See p. 7.)

The nonairport uses involve revenue-producing activities. Long-term leases of 20 to 40 years exist and, in some cases, renewal options can extend nonairport use for an additional 60 years. (See p. 10.)

LCD-80-84

Tear Sheet. Upon removal, the report cover date should be noted hereon.

The nonairport land uses include

--an industrial park complex,

--private residences,

--recreation (parks, golf courses, a stock car race track, and rodeo grounds),

--municipal government facilities (bus garage, sewage lagoon, and a dog pound),

--other commercial businesses (a bank and a credit union, car rental agencies, an animal clinic, a hotel, and a beauty salon), and

--agriculture. (See p. 7.)

WHY HAS THIS HAPPENED?

FAA has not effectively monitored land use nor enforced legal restrictions. FAA has established a program for monitoring the development and use of these properties but it has had a very low priority and FAA field offices have not implemented it. (See pp. 27 and 28.)

In addition to the low priority given to the program, FAA has failed to ensure that adequate staffing and other resources are provided to conduct the program. Years of neglect, program deemphasis, and a low priority have resulted in loss of program control, lack of property accountability, and insufficient information and data base for effectively carrying out compliance responsibilities. (See pp. 23 to 29.)

The deficiencies discussed in this report are not new to FAA. Similar problems and questionable land uses have been reported to FAA management repeatedly in various reports over at least the past decade. (See pp. 29 and 30.)

RECOMMENDATIONS

To curb the unauthorized use of federally obligated airport land, GAO recommends that the Secretary of Transportation require the Administrator of FAA to:

--Determine the extent of improper and unauthorized uses of land at federally obligated airports.

--Encourage airport sponsors to take corrective actions as needed. If the sponsors are unwilling to do so, FAA should:

1. Reclaim donated land that is not being used or developed for the purpose conveyed in, and in accordance with, the conveyance agreement.

2. Obtain reimbursement or ensure proper reinvestment by an airport sponsor in other airport improvements where land purchased with grant assistance is not being used appropriately. (See p. 20.)

To increase program effectiveness, GAO recommends that the Secretary of Transportation direct FAA headquarters to become more actively involved in the control and administration of the program by requiring its regional offices to:

--Follow established program policies and procedures.

--Evaluate program needs and provide appropriate staff resources to carry out an effective monitoring and enforcement program.

--Establish and maintain accurate, complete, and current records to document airport lands with a Federal interest and the related compliance status of airport sponsors. (See p. 31.)

AGENCY COMMENTS AND OUR EVALUATION

FAA plans no special effort to determine the extent of improper and unauthorized use of property at federally obligated airports because it feels adequate resources are not available. FAA has proposed a change in the Airport and Airway Improvement Act of 1979 that it believes would reduce its compliance workload, and it is awaiting congressional action before deciding a future course of action. Concerning the reclaiming of donated land and the obtaining of reimbursement or ensuring proper investment, FAA said it will take action along the lines recommended. (See p. 21.)

GAO believes that FAA's limited efforts to determine the extent of improper and unauthorized use of property at federally obligated airports will seriously curtail its actions in reclaiming donated land and in obtaining reimbursement or ensuring proper investment. (See p. 21.)

FAA says its regions are required to follow established program policies and procedures but they are free to use available resources in a manner which they believe best meets the agency's safety mission and the region's needs. FAA plans to improve its records on the status of Federal interest in airport lands by updating its records. (See p. 31.)

CHAPTER 1

INTRODUCTION

Through the years the Congress has passed various laws authorizing Federal agencies to help State and local governments 1/ develop public airports. Federal agencies are authorized to donate federally owned real property needed for airport development or operations and to grant funds for airport projects, including land acquisitions. The Federal Aviation Administration (FAA) either approves or recommends approval for all such assistance, thus serving as the focal point through which Federal resources are made available to State and local governments.

FAA devised the National Airport System Plan as a means of compiling future development needs for the Nation's public airports. The Plan identifies airport development projects in which there is a potential interest and on which Federal grant funds may be spent under the Airport Development Aid Program.

DONATED FEDERAL REAL PROPERTY

Both surplus and nonsurplus federally owned real property may be conveyed to State and local governments for airport purposes.

Surplus real property

Land, buildings, and facilities, such as former military airfields, may be conveyed to State and local governments when no longer needed by any of the Federal agencies. The Surplus Property Act of 1944, as amended, authorized Federal agencies to transfer surplus real property to State and local governments for use in developing, maintaining, or operating public airports. The act also authorized the use of donated surplus property to develop revenue sources to support public airports.

Real property is conveyed directly to State and local governments by the General Services Administration after FAA's recommendation. The transfers are intended to provide

---

1/Components of State and local governments include municipal, county, and State public agencies and authorities.

continued public benefit, usually at no cost to the recipient. The property is normally conveyed by a deed which includes restrictions to

--assure that the property is used for airport development or operations or other authorized purposes,

--prohibit the sale, lease, or disposal of the property without FAA's consent, and

--permit FAA to reclaim the property if any of the transfer conditions are violated.

These restrictions are permanent unless FAA releases the recipient.

Nonsurplus real property

Under the Federal Airport Act of 1946 and the Airport and Airway Development Act of 1970, nonsurplus federally owned real property may also be conveyed to State and local governments for development or operation of public airports.

The 1946 act, now repealed, provided that whenever the FAA Administrator determined that any U.S.-owned property was needed to carry out an airport project or to operate a public airport in a national plan, he could ask the Federal agency controlling the property to convey it to the State or local government in charge of the project or the airport. The Federal agency donates the property if it does not need it.

This law also provided that property will automatically revert to the United States if it is not developed as an airport or used for airport purposes. The act did not specify time limits which would make the reversion clause operable. In the early 1960s, deeds provided for reversion if the land was not developed for airport purposes within 3 years or if airport use ceased for a period of 6 months. In 1968 FAA regulations extended the time limit for development to 5 years and gave the Administrator the right to repossess up to 1 year after donation any part of the property not developed for airport use.

The chief difference in the 1970 legislation for conveyance of nonsurplus real property is that reversion is not automatic, but at the option of the Secretary of Transportation. As the principal agency administering the program,

FAA has issued regulations requiring that the property donated under this law be developed for airport purposes within 1 year. If the property is not developed or used in a manner consistent with the terms of the conveyance, the Administrator may take title to all or any part of the property interests conveyed.

REAL PROPERTY ACQUIRED WITH GRANT FUNDS

The acts of 1946 and 1970 authorized FAA to grant funds for planning and developing public airports. Matching grants are available for projects to improve safety and increase capacity. The Federal share of project cost has varied over the years but is generally 90 percent. 1/

FAA policy and guidelines for this program provide that an airport sponsor may receive a matching grant as reimbursement of the cost of real property needed for current or future airport development. Generally, real property eligible for matching grant funds include building and landing areas, clear zones, approach areas, and offsite areas required for airport utilities, such as sewage, drainage, power, and lighting of obstructions. Eligible real property acquisitions may also include easements to prevent interference with airport development or operation. Real property acquired for industrial and other nonairport use is not eligible for reimbursement.

FAA will not grant funds for acquisition of real property for future airport development unless the sponsor agrees:

--To construct a facility consistent with the National Airport System Plan within a specified time or refund the Federal share of the acquisition cost or the real property's fair market value, whichever is greater, plus the Federal share of any net revenue derived from the use of the real property by the time of sale or expiration of the period.

--To deposit and account for all net revenue from interim use of the real property into a special fund to be used exclusively for approved airport development. The Federal share of these funds may not be used to match Federal funds in future grants.

1/For fiscal year ending September 30, 1980, the Federal share is 80 percent.

--Not to sell or lease the real property without FAA approval.

VALUE OF GRANTS AND DONATED REAL PROPERTY

FAA records showed that, as of August 1978, surplus property had been conveyed to State and local governments at 650 airports and nonsurplus property had been conveyed at 181 airports. (See app. II.) The number of acres of surplus property conveyed is not known; however, FAA estimates that 60,000 acres of nonsurplus land has been conveyed.

We did not attempt to determine the market value of Federal resources made available to State and local governments for airport purposes. A General Services Administration report showed that 20 surplus properties transferred during fiscal year 1976 was valued at over $63 million. FAA records showed $682 million in grant funds had been awarded since the program's inception in 1946 through mid-1979. Grants awarded since 1970 total $525 million, or 77 percent of the total.

Despite the absence of precise data, it is estimated that billions of dollars in Federal resources have been directly applied to this program. For example, FAA guidelines for monitoring the use of real property stated that the "program involves the administration of valuable rights obtained for the people of the United States at a cost of several billion dollars in grants and property transfers."

RESPONSIBILITIES OF FAA

Whether airport sponsors acquire real property by Federal donation or by purchase with Federal matching funds, FAA is responsible for seeing that the land is developed and used for airport purposes. According to the law (50 U.S.C. app. 1622b, 1970), the Administrator is solely responsible for determining and enforcing compliance with the terms of deeds conveying surplus real property. FAA is responsible for reclaiming nonsurplus properties for the United States when the property is not being used appropriately. FAA is responsible for assessing the sponsor's continuing need and seeking reimbursement or reinvestment in other airport improvements where land purchased with matching grant assistance is not appropriately used.

PROPOSED LEGISLATION

On February 5, 1980, the Senate passed a bill, S. 1648, 96th Congress, 2d session, concerning the Airport and Airway System Development Act of 1979. However, as of April 29, 1980, the House had not even scheduled this bill for hearings.

Subsection 23(c)(1) of S. 1648 would allow airport sponsors not currently receiving Federal airport development assistance but who have acquired real property with Federal participation in the past to terminate obligations regarding the use of such land contained in grant agreements, deeds, or other instruments of conveyance. This subsection also directs the Secretary of Transportation to issue criteria and requirements pursuant to which sponsors of qualifying airports may terminate their obligations. Accordingly, subsection 23(c)(1) would permit these airport sponsors to escape the restrictions on the use of such property. On the other hand, sponsors of airports still receiving Federal funding for airport development would be unable to terminate their obligations and would remain subject to the restrictions on real property use.

Since S. 1648 has not as yet been enacted into law, it does not affect our conclusions and recommendations. Even if S. 1648 is enacted into law in its present form, it would not allow all airport sponsors to escape land use restrictions on land acquired with Federal assistance and, therefore, our conclusions and recommendations would still be relevant. However, a number of the airports covered by our report and about which we have asked FAA to take action might not be subject to that action if the bill is enacted.

Section 24 repeals the provisions of the Airport and Airway Development Act of 1970 effective September 30, 1980, and makes the Airport and Airway System Development Act of 1979 effective as of that date. This section also contains a savings provision which continues the validity of administrative orders and regulations issued under the 1970 act until they are modified. Section 24 would have the effect of repealing all old requirements on land use which section 23 has partially replaced.

We note also that S. 1648 requires that a reversion provision be included in future conveyances of Federal lands to airport sponsors similar to that in the 1970 law. This appears to reaffirm congressional intent that the Secretary

of Transportation should have the option of requiring reversion of donated Federal lands in appropriate circumstances.

SCOPE OF REVIEW

We reviewed FAA policies, procedures, and practices for monitoring the development and use of real property conveyed to State and local governments in 4 of FAA's 11 regions. Our review primarily focused on land. For the most part, our work was done at the following regional and district offices:

--Great Lakes region:
  Des Plains, Illinois
  Minneapolis, Minnesota
  Detroit, Michigan

--Western region:
  Burlingame, California

--Rocky Mountain region:
  Aurora, Colorado

--Southwest region:
  Albuquerque, New Mexico

We also visited FAA headquarters in Washington, D.C., and selected airports to see how the property was being used.

Our initial work concerned nonsurplus property conveyances. Nonsurplus properties at selected district offices were 40 percent of all nonsurplus conveyances.

After selecting the airport district offices, we expanded our review to include FAA's monitoring of the development and use of donated nonsurplus and surplus land and land acquired with matching grants.

CHAPTER 2

LAND NOT USED AS INTENDED

Airport sponsors acquiring land with Federal assistance agree to develop it for airport purposes only. In many instances this is not being done and FAA is not doing anything about it. Our review disclosed numerous cases of federally donated land which was either being used for nonairport purposes or which had not been developed. We included 72 airports in our review. (See app. III.) At 20 airports, land was being used for nonairport purposes. At 16 airports, land had not been developed or was not being fully used for airport purposes.

NONAIRPORT USE OF LAND

The laws governing nonsurplus conveyances of land and grant acquisitions for land for airport purposes specify that the land must be used for those purposes. However, these laws do not define airport purposes. FAA has broadly defined them to include almost any activity that does not interfere with airport operations. Even in those rare cases where FAA officials acknowledged that an activity was a nonairport function, they approved it as being compatible with airport operations. In some cases FAA considered the nonairport use to be an interim or incidental use.

Several airports we visited were using land for what we considered nonairport purposes, such as

--an industrial park complex;

--private residences;

--recreational parks, golf courses, a golf shop, and a stock car race track;

--municipal government activities (a bus garage, a sewage lagoon, and a dog pound);

--other commercial businesses (a bank and a credit union, car rental agencies, an animal clinic, a hotel, and a beauty salon); and

--agriculture.

The questionable use of the land was not limited to one area of the country and was not confined to a specific FAA region. These activities existed in all of the FAA regions included in the review. FAA officials generally were aware of these uses and had not disapproved them. According to FAA, these activities are either incidental or complimentary to airport operations.

In addition to the uses mentioned above, FAA's files of airport layout plans and layout maps showed that a number of airports had reserved airport land for future uses that also were not airport related, such as commercial leasing, camping, agriculture, industrial park, and low-rent housing. Although FAA has not approved the proposed activities, many appear on airport layout plans which FAA has approved. According to one FAA official, approval of the airport layout plan is tantamount to approval of the land uses specified on the plan.

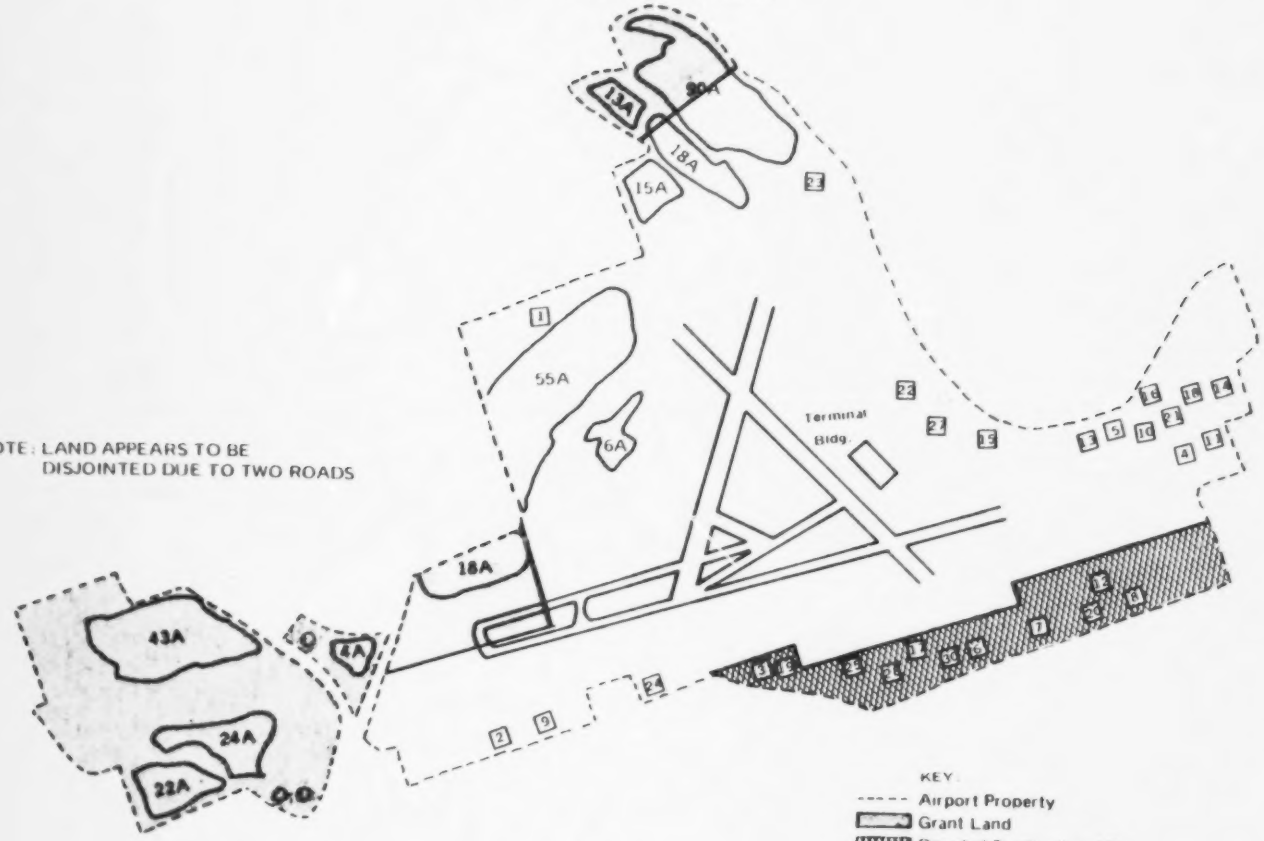
Following are some examples of questionable land uses, the position of the airport sponsors on these uses, and FAA's response to our conclusion that the uses are not airport related.

Greater Rockford Airport,
Rockford, Illinois

The airport consists of federally donated surplus and nonsurplus land and land purchased with grant funds, as well as a small amount of privately purchased land. We could not determine from FAA records the exact number of acres obtained from each source, but we did determine that almost 70 percent of the airport is nonsurplus land. Nonairport activities taking place on land either donated by the Federal Government for airport activities or purchased with Federal grants for such activities include an industrial park complex, personal residences, and farms. A layout of the airport, shown on the following page, shows the extent of such activities. Almost 400 acres are devoted to nonairport uses.

Commercial and industrial development is extensive. A list of twenty-eight industrial leases covering 80 acres of airport land is shown on page 10.

GREATER ROCKFORD AIRPORT
ROCKFORD, ILLINOIS



Greater Rockford Airport Authority
Industrial Leases at June 18, 1979

Plot No.	Type of land conveyed	Purpose	Current lease Years	Current lease Expires	Renewal options (Years)
1	Nonsurplus	Automotive auction	10	1984	-
2	Nonsurplus	Rendering plant	25	1987	25
3	Surplus	Truck dock	10	1981	20
4	Nonsurplus	Manufacturing and engineering	20	1983	60
5	Nonsurplus	Distribution--milled wood products	20	1983	-
6	Surplus	Machine shop and storage	10	1986	-
7	Surplus	Building construction and contract	20	1986	40
8	Surplus	Light manufacturing	10	1984	20
9	Nonsurplus	Bituminous paving and construction	2	1981	8
10	Nonsurplus	Manufacturing and engineering	20	1984	60
11	Nonsurplus	Sales and service of construction machinery	20	1998	60
12	Surplus	Warehousing	20	1998	60
13	Nonsurplus	Manufacturing and sales of hydraulic machinery	20	1984	-
14	Nonsurplus	Apprentice school for plumbers and pipefitters	20	1999	60
15	Nonsurplus	Constructing and leasing commercial property	20	1989	60
16	Nonsurplus	Kennel	20	1986	40
17	Surplus	Poultry products	20	1988	60
18	Nonsurplus	Manufacturing, warehousing, engineering, and sales	20	1988	60
19	Surplus	Warehousing and manufacturing	20	1988	60
20	Surplus	Oil bulk storage plant	(b)	-	-
21	Nonsurplus	Manufacturing, repair and sales of electrical components	20	1988	60
22	Nonsurplus	Engineering services	20	1990	30
23	Nonsurplus	Animal shelter	20	1998	20
24	Nonsurplus	Parking lot-Warren Ind.	10	1989	30
25	Surplus	Light manufacturing, sales and service	20	1994	60
26	(note a)	Not assigned	-	-	-
27	Nonsurplus	Offices and retailing of motor fuels	10	1984	10
28	Surplus	Light manufacturing	20	1997	60
29	(note a)	Not assigned	-	-	-
30	Surplus	Construction equipment sales and service	20	1998	60

a/ Not leased.
b/ Monthly lease.

FAA's policy is that nonsurplus property cannot be used for nonairport purposes unless its use is temporary, normally less than 3 years. Yet, most leases are for 20 years and most have renewal options ranging from 20 to 60 years. In fact, 21 of the 28 industrial leases will extend beyond the year 2000 if the options are exercised.

In addition to industrial uses, the airport leases over 300 acres of nonsurplus land and land purchased with grant funds for farming and private residences. In contrast to long-term industrial leases, agricultural leases are annually and residential leases are monthly. These short-term leases often are unwritten and thus unavailable for FAA review.

FAA officials knew of the industrial activities on the nonsurplus property, but stated they had not specifically approved them. In our view, such comments are not responsive to the situation. The land is being used for other than airport purposes, and FAA officials have known it for some time but have done nothing to correct the situation. In our opinion, FAA has indirectly approved such uses.

The industrial use area appeared on the 1963 airport layout plan which FAA approved. Although the nonsurplus conveyance document restricts land use to airport purposes, FAA notified the airport sponsor in 1964 that the industrial leases are not inconsistent with reservations and restrictions contained in the deeds and the grant agreements. The airport sponsor stated he was unaware of any law restricting industrial development on airport land. A Greater Rockford Airport Authority brochure boasts of the airport's nonaviation businesses, as illustrated by the following descriptions.

INDUSTRIAL PARK

Companies such as these provide a steady flow of dollars into the Rockford economy daily.

A full parking lot indicates a prosperous business and employment for Rockford people.

Well kept, landscaped lawns with trees and shrubbery strategically placed demonstrate that a manufacturing concern can be attractive as well as profitable.

Around the perimeter of the Airport is an Industrial Park, which is growing yearly. Attractive, well-kept shops produce everything from metal washers to dressed chickens. An advantage of being part of the Airport family, besides having plenty of "elbow room" and the country fresh air one can enjoy, is the assurance of having all urban facilities, including Airport-based police and fire protection.

Nonairport activities at Greater Rockford include 2 public parks, 33 nonaviation businesses, and a land reclamation project converting 210 acres into tillable farm land. All of these are located on federally obligated airport property.

The sponsor maintained that FAA had approved the nonairport uses. FAA did grant a release of restriction on surplus land for industrial use but not on nonsurplus land. By law, 1/ nonsurplus land cannot be released for revenue-generating, nonaviation purposes.

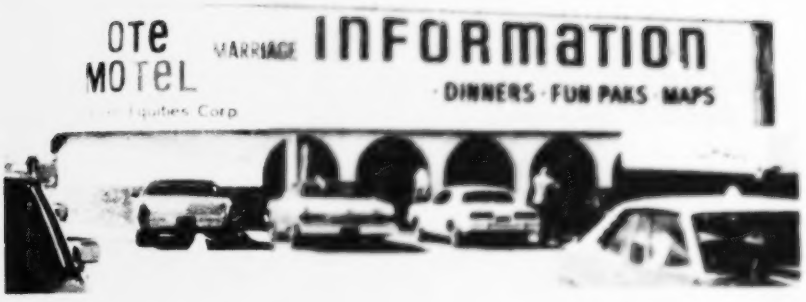
Despite the nonairport uses, the most recent compliance inspection report (January 1976) indicated that the airport sponsor was complying with Federal obligations. An FAA official agreed that the Greater Rockford Airport "may have some items of a noncompliance nature," and stated that those items will be considered in future grant applications. As of September 1979, FAA officials had taken no corrective action and stated they planned none until our report was issued.

McCarran International Airport, Las Vegas, Nevada

At this airport, land acquired with Federal assistance consists of donated surplus and nonsurplus land and land purchased with grant funds. Nonairport activities on these lands include those pictured on the following page, plus a land sales office, an animal clinic, a golf shop, a pool cleaning service, and several car rental agencies.

The airport sponsor was aware of obligations regarding the use of land for airport purposes, but said he has had problems finding tenants with airport-related businesses. FAA was unaware of the nonairport activities.

1/Airport and Airways Development Act of 1970.



PREFERRED EQUITIES BUILDING LOCATED ON NONSURPLUS LAND.

Stapleton International Airport, Denver, Colorado

This airport is composed of land acquired from several sources--surplus and nonsurplus donations and purchases with Federal grant and private funds. A commercial bank and a credit union have been operating on land acquired with Federal grant funds. The airport sponsor stated that FAA officials may have attended some meetings on the leases, but have not formally reviewed them. An FAA official said these

uses did not violate regulations. In his opinion they were compatible with the airport's mission and the land they occupied could not be used for other airport purposes, such as a buffer zone. He said these activities provided revenue for the airport, which is consistent with FAA's objective that airports be self-sustaining. In our opinion, the production of revenue is not sufficient justification for approving nonairport activities. If it were, virtually any revenue-producing activity could be located on federally donated or financed airport land.

The FAA policy manual provides for a 20-year duration on grant restrictions. FAA officials and the airport sponsor used this provision to point out that since the grants were issued in 1955, the grant restrictions were no longer enforceable.

FAA's policy is that obligations in grant agreements remain in force throughout the useful life of a facility, but not to exceed 20 years. Likewise, grant agreements stipulated a maximum 20-year period for facilities developed under a project. Land, however, is excluded. In January 1979 FAA affirmed this statutory and policy requirement and directed that grant agreement forms be revised to show exclusion of land from the limitation period.

Minneapolis-St. Paul International Airport,
Wold-Chamberlain Field,
Minneapolis, Minnesota

This airport is composed of land acquired from Federal sources (surplus and nonsurplus donations and purchases with grant funds), the Minneapolis Park Board, and private sources. In addition to the recreational fields pictured on the following page, nonairport activities included an auto repair shop, headquarters for an air carrier, a municipal bus garage (under construction), a medical clinic, and several car rental agencies with service areas.

MUNICIPAL BALLFIELDS LOCATED ON GRANT LAND

MUNICIPAL GOLF COURSE - OPENING FALL 1980
LOCATED ON GRANT LAND

FAA officials knew of these activities and recently approved leases for the golf course (Richfield Municipal Golf Course) and the bus garage. FAA identified both leases as being for nonairport uses, but approved them based on the understanding that these activities were only incidental uses of airport land and were compatible with airport operations. The leases were for 30 and 40 years and on land acquired with grant funds; thus, we believe they do not qualify as incidental uses. Further, FAA's policy is that a nonaviation lease of more than 20 years is the same, in effect, as a disposal of the property. If so, FAA should review the airport, assess the sponsor's continuing need, and obtain reimbursement or reinvestment in other airport improvements.

LAND NOT DEVELOPED

Airports, especially those located in sparsely populated areas of the western United States, have received large amounts of federally donated land which has not been fully developed. Since it was conveyed expressly for the development of public airports, undeveloped land should revert to the Federal Government. In 16 of the 72 cases we reviewed, airports had failed to fully develop the land. FAA officials were generally aware of the lack of development and cited two basic reasons why they had not acted to revert the land.

First, before 1960 conveyance documents did not specify time frames for beginning development of airport activities or for reversion after use ceased. The absence of specific time frames made it difficult for FAA to determine when to take action. Conveyance documents prepared after 1960 specified time frames, but FAA still failed to act even when provisions of those documents were violated. Two sponsors had failed to develop property within the specified time frames, no extensions had been granted, and FAA had done nothing. One of these properties was conveyed in 1963 with a 3-year time limit and the other was conveyed in 1968 with a 5-year time limit. As of June 1979, no development had taken place. FAA officials stated they had included these airports in the National Airport Systems Plan, which is equivalent to authorizing an extension. They also stated that they will take no actions to revert the properties as long as the airport layout plans indicate, or the sponsors propose some future development.

Second, FAA believed that nonsurplus land could not be reverted piecemeal. Many airports we reviewed consisted entirely of nonsurplus land conveyed by the Bureau of Land Management, whose policy was to convey land by quarter sections (160 acres) along previously surveyed boundaries. This practice eliminated the need for additional surveys but gave airports more land than they required. Once the land was conveyed, FAA officials believed they had no authority to revert the unused portion. Under their interpretation, FAA regulations and language in the conveyance documents did not provide for piecemeal reversions. In 1968 FAA regulations were amended to affirm partial reversion of undeveloped land. Although 12 years have elapsed, FAA has not reclaimed large acreages of undeveloped land observed at 16 airports.

We believe the main reason sponsors continue to hold land without developing it is FAA's inaction. FAA does not review sponsors' activities to determine whether the land is being developed or used. FAA is more concerned that airports have enough land for future development, not that they may have more than enough.

One FAA official stated that FAA has informally asked some sponsors to voluntarily revert undeveloped land. The sponsors responded by saying "Why should we give up free land?"

Following are some illustrations of FAA's not fulfilling its reponsibility to see that the properties are developed.

Municipal Airport, Hawthorne, Nevada

This airport received 139 acres of nonsurplus land in 1963 for runway extension and clear zone. As of June 1979, the only development of the property had been the construction of a 10-acre stock car race track.

Municipal Airport, Cokeville, Wyoming

This airport received 320 acres of nonsurplus land in January 1967. Over 12 years later, less than half the land had been developed for airport purposes. The conveyance document provides for automatic reversion to the Federal Government if the land is not developed for airport purposes within 3 years. The sponsor is willing to revert the unneeded land (about 160 acres), but FAA has taken no action.

Beatty Airport, Beatty, Nevada

Nye County received 440 acres of nonsurplus land in August 1953 for airport development. As part of its support for the conveyance, Nye County prepared a map showing two proposed runways. Twenty-six years later only one runway has been built. While the airport layout map still shows a second proposed runway, FAA is not aware of any plans for future development. In this case the conveyance document did not specify time frames, but we believe 26 years is sufficient. FAA's policy is that 1 year is a reasonable period. FAA officials agreed that excess land may have been conveyed but they have taken no action to reclaim any of it.

Municipal Airport, Hatch, New Mexico

The sponsor's actions and FAA's lack of positive actions have caused Federal agencies to negotiate for property which should have been reverted automatically.

The property, 120 acres of nonsurplus land, was conveyed by the Bureau of Land Management in August 1961 for airport purposes under the Federal Airport Act of 1946. Under this law, property is to automatically revert to the United States if not developed. Over 14 years after conveyance, a Bureau report disclosed that some of the land was being used for target shooting. The Bureau asked FAA to determine if the sponsor was in compliance and, if not, to either obtain compliance or reclaim the land. In its response, FAA agreed that excess land had been conveyed, but noted that because reversion could be time consuming and expensive, the benefits must offset the costs. FAA later determined that the nonairport use did not interfere with airport development, maintenance, or operation, therefore, a noncompliance status was not justified.

Three years after the Bureau's report, FAA determined that Hatch Municipal had 40 acres of land not being used for airport development and asked the airport sponsor to return it to the Federal Government. The sponsor acknowledged that the land had not been improved but refused to return it saying it was needed for an industrial park or possibly a State penal facility. Neither use is permitted under terms of the conveyance document.

At the time of our review, the sponsor offered to revert the 40 acres if the Bureau redonates it under the Federal Land Policy and Management Act. This act enables land of no national significance to be conveyed for an established or proposed project. As with surplus and nonsurplus, the land is free.

Although the land should be automatically reverted, FAA is unwilling to act until the airport sponsor is assured of receiving the land under different provisions.

CONCLUSIONS

Many airport sponsors are correctly using land acquired with Federal participations. However, at a number of federally obligated airports, sponsors are either using airport land for nonairport purposes or are not developing land that appears to exceed their needs.

When FAA determines that airport sponsors are not complying with obligations contained in the conveyance documents, it must take action. The course of action depends upon how the land was acquired. For surplus and nonsurplus land, FAA should reclaim the land for the Federal Government. For land acquired with grant funds, the land must be sold and the Federal Government must be reimbursed for its pro rata share of the net proceeds or the total net proceeds must be reinvested in the airport within 5 years.

Although some airport sponsors have voluntarily reverted excess land to the Federal Government, we are not aware of any cases where land has been voluntarily reverted as a result of FAA's actions.

RECOMMENDATIONS

To curb the unauthorized use of federally obligated airport land, we recommend that the Secretary of Transportation require the Administrator of FAA to:

--Determine the extent of improper and unauthorized uses of land at federally obligated airports.

--Encourage airport sponsors to take corrective actions as needed. If the sponsors are unwilling to do so, FAA should:

1. Reclaim donated land that is not being used or developed for the purpose conveyed in, and in accordance with, the conveyance agreement.

2. Obtain reimbursement or ensure proper reinvestment by an airport sponsor in other airport improvements where land purchased with grant assistance is not being used appropriately.

AGENCY COMMENTS AND OUR EVALUATION

We submitted draft copies of this report to the Department of Transportation for its comments. (See app. IV.) The Department essentially agreed with the facts presented in this report and made the following comments concerning the above recommendations.

FAA does not plan, at present, to make a special effort to determine the extent of improper and unauthorized use of property at federally obligated airports. FAA said that adequate staff resources simply are not available. Further, FAA stated that it has proposed a solution in the Airport and Airway Improvement Act of 1979 that, if enacted, would considerably reduce the compliance workload. States would then have the option of accepting block grants for airport development and improvements. Those States that accept block grants would be obligated to perform the compliance program for FAA. In recognition of this possibility, FAA is awaiting congressional action before deciding a future course of action.

Concerning the reclaiming of donated land and the obtaining of reimbursement or ensuring proper reinvestment, FAA said it will take action along the lines recommended. To the extent that misuse is known, the FAA regions will reclaim donated land that is not being used or developed for the purpose conveyed and in accordance with the transfer agreement. Similar action will be taken with respect to grant acquired land. In this regard, the regions have already been instructed to review the cases cited in the report and take appropriate action. As a result, the 40 acres of unused land at Hatch, New Mexico, has been returned to the Federal Government and additional actions are in process.

We believe that FAA's limited efforts to determine the extent of improper and unauthorized use of property at federally obligated airports will seriously curtail its actions in reclaiming donated land and obtaining reimbursement or ensuring proper reinvestment.

CHAPTER 3

NEED TO IMPROVE AIRPORTS COMPLIANCE PROGRAM

FAA has not taken sufficient action to see that land federally funded or donated to State and local governments is actually used for airport purposes. FAA has established a program for monitoring the development and use of these properties, but the program has been assigned a low priority and FAA field offices have taken little action to implement it. FAA's records are inadequate, its inspections have been infrequent and incomplete, and its enforcement has been lax. Although internal and external reports have repeatedly cited program deficiencies, FAA has not corrected them.

FAA'S COMPLIANCE PROGRAM

The main objective of FAA's airports compliance program is to ensure that public airports are properly maintained and operated while providing for the full realization of the public benefit contemplated by the Federal investment in public airports. FAA stresses that the compliance function is not regulatory, but it holds airport sponsors to contractual obligations and commitments resulting from Federal grants and donations of land. Following are priority objectives established for the compliance program.

--Ensure and preserve airport safety by maintaining runways, taxiways, markings and lightings, clearing approaches, and public use facilities.

--Ensure proper use of airport land by accounting for (1) all income from surplus land conveyed for producing nonaviation revenues and (2) funds derived from the sale or disposal of airport land.

A low priority is assigned to other FAA responsibilities, such as ensuring that airports are available for public use on reasonable terms and without unjust discrimination or monopolistic restraints.

FAA field offices control the resources to be assigned to the priorities established at the FAA headquarters level. Thus, in effect, the field offices determine the priority to be placed on this important national program.

INADEQUATE RECORDKEEPING

FAA has not maintained the records needed to ensure that airport sponsors are meeting their obligations. It lacks an accurate inventory of airport property acquired with Federal assistance and documentation of each airport's compliance status.

Inadequate inventory

FAA cannot ensure that all airport land is properly accounted for because it has not maintained an accurate inventory of airport land acquired with Federal financial assistance. It does not know the number of agreements in effect, the acreage involved, the dates of acquisition, etc.

FAA Order 5190.2K is a list of all public use airports under agreements from Federal assistance programs. This list includes surplus and nonsurplus Federal land transferred for airport purposes.

This list disagreed with sponsor records and other FAA records for many of the airports in the FAA regions. Records were not always available that would allow FAA to reconcile the differences. Five airports were incorrectly shown on the FAA order as having nonsurplus land, while three airports having nonsurplus land were omitted. A national inventory of nonsurplus land transfers, which FAA compiled at our request, likewise does not enable a reconcilation of differences and does not agree with the FAA order.

FAA recognizes that an inventory is needed to determine whether all airport land is being used as intended by the applicable law. Policy prescribes a land use plan as the most effective means for maintaining such an inventory. This is a scaled drawing of the airport, identifying the current and planned use of each area as agreed to or approved by FAA.

Despite the acknowledged value of land use plans, they are not required, and the airports we visited had none. Recent correspondence by FAA headquarters indicated that the absence of a land use plan is common at other airports. For example, FAA found that development plans and land use plans did not exist for revenue-producing property at surplus military airports transferred in the late 1940s.

Inadequate information on individual airports

FAA likewise has insufficient information on individual airports for effective monitoring. For example, FAA does not have records of the total acreage, sources of acquisition, and the specific uses being made of the land at each airport. For airports which have used more than one method of land acquisition (nonsurplus, surplus, grant funds, or sponsor acquired), distinguising how each parcel was obtained becomes important since sponsors have different obligations under the different types of agreements. (See app. I.) Further, at some airports, land deeds were not available. We were told that some FAA regions do not have so much as a map showing each airport's total acres.

Key documents, such as airport layout plans and the airport master records, were not accurate, current, or complete at many of the airports reviewed. The airport layout plan is required for Federal grants for airport development and for some recent surplus transfers. FAA considers this plan important in controlling development of airport facilities. It is to be approved by FAA and kept current.

The plan is a map of existing and proposed airport facilities that is supposed to identify the use of

--revenue-producing nonaviation land;

--industrial areas, motels, and other areas reserved for nonaviation development;

--facilities that are to be phased out; and

--airport boundaries and areas owned or controlled by the sponsor, including easements. 1/

Although the layout plan should depict areas controlled by the sponsor, at the Greater Rockford Airport in Illinois, extensive easements granted by the U.S. Government over 30 years ago were not shown. Easements for air rights and

---

1/An easement is a partial interest in land held by the airport sponsor to prevent development by the land owner or to permit use by the airport.

height restrictions, in an area which may cover over 1,000 acres, were conveyed as part of surplus land transfers in 1948. FAA was not aware of these easements, which apparently are of considerable monetary value. For example, this airport acquired easements restricting height on 11 acres at a cost of $13,000 in 1960. Releases of 1948 easements were later granted without FAA's coordination or approval. On part of this land, construction of a 142-foot transmitting tower on top of a 25-foot building was proposed, which may be a flight hazard.

Compliance status undocumented

Although FAA records show that most airports are complying with land restrictions, these records are not supported by fieldwork. Under FAA policy, field offices are required to know the compliance status of each airport in their area of jurisdiction. Compliance is to be determined based on annual field inspections. If current information is not available, the airport's status must be reported as unknown. FAA is not adhering to these time frames. Fifteen of the airports visited were last inspected for compliance in 1970 or 1971. Eighteen percent of the nonsurplus land nationwide was last inspected 6 to 10 years ago. FAA data on an additional 12 percent shows that no inspections have been made or it does not show whether inspections have been made.

Other problems with the documentation of compliance determinations were noted:

--Reporting formats were not standardized.

--Records were incomplete.

--Supporting data for the compliance determination was generally unavailable.

With few exceptions, the airports visited were all reported to be in compliance. Similarly, the national inventory shows almost all airports with nonsurplus land to be in compliance, including the 20 airports where no compliance inspections were reported.

REQUIRED EVALUATIONS NOT PERFORMED

To ensure maximum public benefits, FAA must learn how land is being used by reviewing leases, use agreements, and other financial matters, such as property taxes. Although

FAA policy highlights the need for such reviews, they were infrequent and superficial. FAA field offices were sometimes unaware of leases and agreements and of the sources and applications of nonaviation revenue generated by the use of airport property. Also, FAA does not always know who is benefiting from the use of airport land.

A review of leases, agreements, and financial statements should identify conditions which could reduce the airport's public benefits or hamper the owner's ability to meet his obligations to the Government. Further, the review should be useful in determining whether the airport owner or operator charges users equitably for the use of facilities and services, and ensure that private businesses do not benefit unfairly from the use of public lands.

For example, from a tax standpoint it can be advantageous for a nonairport business to be located on airport land. Property taxation of nonaviation businesses vary at airports, and in some cases, provide tenants a tax advantage. At one airport reviewed most land was tax exempt; at another, tenants paid about half the tax rate of the surrounding communities. Where businesses get a tax break by leasing airport land, the public may not be deriving full benefit. Since FAA does not actively review financial statements or leases, it is sometimes unaware of these advantages and other benefits accruing to nonairport users of the land.

As a matter of policy, FAA is not normally concerned with airport management or accounting procedures. To carry out its responsibilities, however, FAA must review airport financial data as well as other data to determine whether land was used for authorized purposes and income was properly accounted for and applied to airport development and operations whenever:

--The airport includes land acquired from Federal agencies as surplus and authorized for revenue-producing nonaviation use.

--The airport includes land acquired with Federal assistance for future airport development and FAA has authorized its interim use for nonaviation purposes.

--FAA has authorized the airport owner to sell airport land acquired with Federal assistance. In this situation the airport owner is accountable for the sale proceeds or the amounts reinvested in airport development.

Although nonairport uses should support the airport as much as possible, FAA has not determined if nonaviation revenue is used as intended.

LACK OF AGGRESSIVE ENFORCEMENT

When FAA has found airports violating land use requirements, it has not acted aggressively to get corrective actions. While remedies available to effect compliance include legal actions and administrative sanctions, FAA policy stresses that field offices should first employ persuasion and advice to bring about voluntary corrective action.

Legal enforcement actions include the right to reclaim donated airport land for the Federal Government. (See p. 4.) Grant agreements create contractual obligations to the Government, which can accordingly institute suit to enjoin certain practices or to achieve specific performances.

In addition to legal remedies, FAA policy provides for administrative sanctions to bring about corrective action:

--Refusal to grant additional funds.

--Suspension or cancellation of projects under federally controlled programs that benefit the airport owner.

Although FAA acknowledged that certain land uses at the airports visited violated requirements, it did not always have the problems corrected. In one region, FAA officials said they would not take action on apparent noncompliance situations until they received our report. In our opinion this attitude illustrates the lax enforcement and indifference which has long prevailed in the FAA monitoring program.

FACTORS CONTRIBUTING TO PROGRAM INEFFECTIVENESS

Aside from weaknesses in information, monitoring, and enforcement, various other factors have contributed to the compliance program's ineffectiveness. FAA has not given the program sufficient attention, has not devoted adequate resources to it, has liberally interpreted certain provisions of law, and has not given sufficient guidance to its regional offices.

Lack of attention to compliance

FAA views promoting airport development as its primary role. This purpose conflicts somewhat with the role of an enforcer. FAA has chosen to emphasize its grant program and deemphasize its compliance function.

Until April 1979, grant activities were given top priority, while compliance activities were given low priority. Then FAA revised its priorities. Compliance is now among eight coequal national objectives.

Regional officials, however, do not foresee increased attention to compliance. Rather, they expect a continuing deemphasis because of reduced staffing and increased concentration on approving grants. They also noted that top priority becomes meaningless when everything is top priority.

Also, although most compliance activities are ranked high in FAA's revised priorities, one major exception is airports that will not get grants in the current year. These airports tend to have low levels of aeronautical activity. Therefore, many airports that are likely to be out of compliance will not receive attention.

Inadequate resources

FAA program officials cited the lack of staff and funds as the basic reason for not monitoring and enforcing the program. Throughout our review, this has been the principal theme, and it has been highlighted by internal studies and reports. For example, a 1978 Department of Transportation audit concluded that minimal resources have been devoted to the program because of its low priority.

FAA regional officials stated that they have not requested the additional staff necessary to effectively carryout the program because they felt the present system would preclude their getting additional resources.

Liberal program interpretations

FAA's liberal interpretations of laws and deed provisions have also contributed to the program's ineffectiveness. For example, FAA officials have broadly defined the airport purposes that nonsurplus land may be used for.

FAA policy cites the legal restriction precluding the conveyance of nonsurplus land for generating income from

nonaviation uses. However, for surplus land FAA policy permits nonaviation, revenue-producing uses which are subordinate to and compatible with aviation. This same policy has been extended to include nonsurplus land donated under a 1946 law. Thus, FAA interpretation permits incidental nonaviation uses of all nonsurplus land.

FAA regional officials acknowledged that under their liberal interpretation, almost any use could be authorized that is compatible with and incidental to airport operations. Although FAA policy provides for incidental uses, FAA's legal counsel in one region informed us that regulations do not provide for such use.

Lack of specific guidance

The regions need more specific guidance concerning program requirements, policies, and procedures. For example, a November 1978 directive for followup inspections on surplus land at airports was interpreted differently by various regional and field offices. One region initially interpreted the directive as requiring 100-percent coverage of airports with surplus land. Some field offices, however, were restricting their review to airports with little or no aeronautical activity, as stipulated in the directive. Although no criteria were presented to define little or no aeronautical activity, the field offices accepted the interpretation that less than 100-percent coverage was meant. The directive permitted field offices to judge which airports to include in the followup inspection.

A HISTORY OF INACTION

Deficiencies in the airports' compliance program have been reported to FAA numerous times during the past decade. Yet FAA has done little to correct them.

Highlights of previous reports on the program follow:

--A 1969 FAA internal audit concluded that the central region did not have an effective compliance monitoring and enforcement program.

--Internal auditors noted in 1973 that the western region had made only 28 of 209 required reviews of airports' agreements in the previous year.

--A 1976 headquarters evaluation found only 5 of 30 airports in good condition and 146 of 365 airports had not been inspected since 1970. The report stated, "It is a well known and frequently expressed fact that for several years the Airports Compliance Program has not been accomplished as required."

--Department of Transportation auditors reported in 1978 that the low level of compliance inspections was compromising airport safety.

In 1975 FAA headquarters, citing serious abuses of transferred surplus military airports, told the regions to consider inspecting such airports. FAA headquarters authorized the regions to revert land where aviation was absent or maintenance was poor. During our 1978 review 1/ of surplus property donated Government-wide, regional officials told us they had taken no action on the headquarters directive. Many of the properties at 15 airports we visited in that review were not benefiting the public. Land was used for unauthorized purposes, including revenue-producing activities. At 12 of the airports, revenues were not used to support airport activities. FAA responded by sending the regions essentially the same 1975 directive, but requiring completion of the inspections by September 30, 1979. However, the coverage intended by this directive was variously interpreted in the field.

CONCLUSIONS

FAA does not have an effective monitoring program to determine how land is being used and whether airport sponsors are complying with applicable laws and property deed restrictions. Deficiencies in the program have been reported over at least the last 10 years, but FAA has not taken corrective actions.

Field offices do not have accurate, complete, and current data essential to an effective program. Airport inspections are infrequent and FAA officials have not (1) determined whether land is used according to legal restrictions and the sponsor's commitments, (2) reviewed leases and agreements, and (3) determined that income is properly accounted for and applied to airport development and operations. Also, field offices have not taken enforcement action when airport sponsors violated land use restrictions and commitments.

1/"Increasing Public Use and Benefits From Surplus Federal Real Property," LCD-78-332, Sept. 12, 1978.

We believe that FAA's lack of attention to this program has been a major cause of ineffective monitoring and enforcement. FAA headquarters has assigned a low priority to the program and has failed to provide adequate staffing and other resources. Also, FAA management has not provided the necessary direction, control, and administration to the program. Unless the program is redirected and its priority is strengthened, it will continue to be ineffective.

RECOMMENDATIONS

To increase program effectiveness, we recommend that the Secretary of Transportation direct FAA headquarters to become more actively involved in the control and administration of the program by requiring its regional offices to:

--Follow established program policies and procedures.

--Evaluate program needs and provide appropriate staff resources to carry out an effective monitoring and enforcement program.

--Establish and maintain accurate, complete, and current records to document airport lands with a Federal interest and the related compliance status of airport sponsors.

AGENCY COMMENTS AND OUR EVALUATION

According to FAA, the regions are required to follow established program policies and procedures. As a practical matter the regions determine the extent to which the programs will be implemented. They must weigh benefits against costs and provide the resources. Unless resources are specifically designated for a particular program by the Congress or the Administrator, the regions are free to use available resources in a manner which they believe best meets the safety mission of the agency and the needs of the region.

FAA plans to take action to improve records on the status of Federal interest in airport lands. During fiscal year 1981, FAA plans to update the "List of Public Airports Affected by Agreements with the Federal Government." FAA advised us that, in this updating, strong emphasis will be placed on the regions to check the actual obligating document to verify land status. Additional emphasis will be given to updating regional files with the actual obligating documents and land usage.

LEGISLATIVE AUTHORIZATIONS, PURPOSES, AND SELECTED POLICIES

APPLICABLE TO AIRPORT LAND ACQUIRED WITH FEDERAL PARTICIPATION

		Nonsurplus land conveyance		Surplus land conveyance	Grant acquisition of land	
		Section 16	Section 23		Federal-Aid Airport Program	Airport Development Aid Program
1.	Legislative authority	Federal Airport Act of 1946, as amended (49 U.S.C. 1115).	Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701).	Section 13(g) of the Surplus Property Act of 1944, as amended (50 U.S.C., app. 1622(g) continued in effect by the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 473).	Same as section 16, nonsurplus.	Same as section 23, nonsurplus.
2.	Purpose	For development or operation of an airport.	For development or operation of airport, including land necessary to meet future development.	To develop and operate as an airport or as source of revenue for an airport.	For airport purposes--operational and support uses in accordance with an approved airport layout plan.	
3.	Consideration to be paid by sponsor	No cost.	No cost.	No cost.	Sponsor generally pays 50 percent of allowable costs for airport development.	For fiscal years 1979 and 1980, sponsor generally pays 20 to 25 percent of total allowable costs for airport development.
4.	Obligating document	Conveyance instrument (property deed).		Conveyance instrument (property deed).	Grant agreement.	
5.	Period of covenants of land use	Perpetuity.	Perpetuity.	Perpetuity.	FAA policy is that obligation in grant agreements remain in force throughout the useful life of a facility but not to exceed 20 years. Accordingly, grant agreements stipulate a maximum 20-year period for facilities developed under a project. Land, however, is excluded from the 20-year limitation period. To incorporate statutory and policy requirements, FAA directed, 1/2/79, revision of grant agreement forms by appropriate regional elements until such time as new, revised forms are issued.	

APPENDIX I

		Nonsurplus land conveyance		Surplus land conveyance	Grant acquisition of land	
		Section 16	Section 23		Federal-Aid Airport Program	Airport Development Aid Program
6.	Land use restriction	Land cannot be conveyed to generate income from nonaviation activity.		Property can be conveyed for nonaviation, revenue-producing purposes. All income must be applied to airport operation and development.	FAA policy provides that land acquired cannot be used for income production.	
7.	Authority of FAA to modify or release terms and conditions on land use	None.	None.	Broad authority to amend or grant release from terms and conditions.	May amend or grant release from terms and conditions.	
8.	Permitted uses for generating nonaviation income	Consent may be given to use for a nonaviation purpose which is completely subordinate and incidental to the prime purpose. All income from such use must be applied to airport development.		Nonaviation use must produce an income which is applied to airport operation and development.	Until needed for intended purpose, land may be used on an interim basis for a compatible nonaviation purpose with all revenues being applied to airport operation and development.	
9.	Reversion of property to U.S. Government or other remedy to correct improper or unauthorized use	Property interest conveyed shall automatically revert to the United States if the land is not developed as an airport or ceases to be used for airport purposes.	Same as section 16, however, reversion is at the option of the Secretary of Transportation.	Property reverts to the United States at the option of FAA if the sponsor defaults.	No reversion right by U.S. Government. FAA is required to obtain reimbursement or reinvestment by the sponsor in other airport improvements if sale or other disposal of property is requested.	

APPENDIX I

NUMBER OF AIRPORTS IN FAA REGIONS

HAVING OBLIGATIONS CONCERNING LAND USE

FAA regions	No. of obligated airports (note a)	Types of Obligations		
		Land		Grants (note b)
		Nonsurplus	Surplus	
Alaskan	118	41	20	97
Central	301	7	55	224
Eastern	191	3	28	179
Great Lakes	376	14	38	336
Northeast	93	3	27	85
Northwest	151	12	43	101
Pacific-Asia	17	2	2	16
Rocky Mountain	272	33	19	205
Southern	506	9	178	436
Southwest	431	19	141	347
Western	221	38	99	166
Total	2,677	181	650	2,192

a/Obligated airports are maintained and operated by sponsors according to specified conditions of contracts or property deeds.

b/Land acquisition is not involved at all grant-obligated airports. FAA, however, does not have information on the number or airports which have acquired land under grant projects.

APPENDIX II

AIRPORTS WITH NONSURPLUS LAND REVIEWED BY GAO

FAA regions	No. of airports Reviewed in FAA field office	No. of airports Visited (note a)	Results of GAO's review Nonairport use of land	Results of GAO's review Land not fully developed or used
Great Lakes	13	9	5	-
Rocky Mountain	33	16	5	4
Southwest	9	2	5	5
Western	17	9	5	7
Total	72	36	b/20	16

a/Airports visited were included in reviews at FAA field offices.

b/An additional six airports had designated land for future nonairport purposes.

APPENDIX III

APPENDIX IV

U.S. Department of Transportation
Office of the Secretary of Transportation

Assistant Secretary for Administration

400 Seventh Street S.W.
Washington, D.C. 20590

May 16, 1980

Mr. Henry Eschwege
Director
Community and Economic
Development Division
U. S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

We have enclosed two copies of the Department of Transportation's (DOT) reply to the General Accounting Office (GAO) report, "Need to Improve Program for Protecting Federal Interest in Airport Land."

The GAO states that over the past 35 years several billion dollars in Federal grants and real property have been given or donated to State and local governments for public airport purposes. GAO concludes that the Federal Aviation Administration (FAA) does not have an effective compliance program to determine how land is being used and whether airport sponsors are complying applicable laws and restrictions.

We are essentially in agreement with the facts presented in the report; however, we do not agree entirely with the conclusions and recommendations. The actions we plan to take on the recommendations are discussed in the enclosed statement.

Please let us know if we can be of further assistance.

Sincerely,

Karen S. Lee, for

Edward W. Scott, Jr.

Enclosures

DEPARTMENT OF TRANSPORTATION REPLY TO GAO DRAFT REPORT OF MARCH 14, 1980 ON NEED TO IMPROVE PROGRAM FOR PROTECTING FEDERAL INTEREST IN AIRPORT LAND

SUMMARY OF GAO FINDINGS AND RECOMMENDATIONS

The General Accounting Office (GAO) states that over the past 35 years several billion dollars in Federal grants and real property have been given or donated to State and local governments for public airport purposes. Property deeds and applicable laws restrict the use of this land and recipient airports are obligated to abide by those restrictions. GAO concludes that the Federal Aviation Administration (FAA) does not have an effective compliance program to determine how land is being used and whether airport sponsors are complying with applicable laws and restrictions.

GAO recommends that FAA (1) determine the extent of improper and unauthorized use of property at federally obligated airports, (2) reclaim donated land that is not being used or developed for the purposes conveyed and in accordance with the transfers, and (3) obtain reimbursement or ensure proper reinvestment by an airport sponsor in other airport improvements where land purchased with grant assistance is not being used appropriately. They further recommend that FAA headquarters become more actively involved in the control and administration of the program by requiring its regional offices to (4) follow established program policies and procedures, (5) provide the resources needed to carry out an effective monitoring and enforcement program, and (6) maintain accurate, complete, and current records of Federal interest in airport lands and of the compliance status of airport sponsors.

POSITION STATEMENT

The FAA is essentially in agreement with the facts presented in the GAO report; however, we do not agree entirely with the conclusions and recommendations.

The GAO apparently assumes that "airport use" is limited to the land required for aircraft operation and that everything else is "nonairport" use. This is an improper assumption since, for example, acquisition of land to ensure that its use is compatible with airport purposes (such as

for clear zones, noise abatement, etc.) is an item eligible for Federal financial assistance under the Airport Development Aid Program (ADAP). Surely it makes no sense for such lands to be acquired by an airport sponsor and then left idle when the land could be put to a productive use and the revenues used to finance other airport development at a cost savings to the local and Federal governments.

We recognize that instances will occur when federally obligated land is misused without the knowledge of FAA, but there is no evidence that this is a widespread practice. Further, deed restrictions and convenants offer safeguards to the Government and can be enforced at any time. This is not to say that we condone the misuse of federally obligated airport property; it is to say that given limited resources, the use of those resources must be carefully considered before making a major commitment. We believe the type of program envisioned by GAO could cost several million dollars initially and a substantial amount annually thereafter with limited benefits.

In addition, the priority given to the airport compliance program is a policy matter for FAA to address along with other airport policy matters. In this regard, Congress has given the FAA broad statutory power under the Airport and Airway Development Act of 1970 to limit the extent of its compliance program by accepting certifications from sponsors that they will comply with all of the statutory and administrative requirements imposed upon them. Although this certification-by-a-sponsor approach is not applicable to surplus property conveyances, embarking on a major compliance enforcement program would be inconsistent with this statutory objective. The initial assumption should be that the land conveyed is not being improperly used, particularly when FAA is aware of the use and has no objection to it rather than the converse. In this respect, a minimally adequate compliance program need be no more than that reflected in FAA's current compliance program. We do, however, plan to take some additional actions as discussed in the following specific comments to the GAO recommendations.

- With respect to the first recommendation, the FAA does not plan, at present, to make a special effort to determine the extent of improper and unauthorized use of property at federally obligated airports. Adequate resources simply are not available. Further, the agency has proposed a solution in the Airport and Airway Improvement Act of 1979 that, if enacted, would considerably reduce the compliance workload. States would have the option of accepting block grants for airport development and improvements. Those states that accept block grants would be obligated to perform the compliance program for FAA. In recognition of this possibility, FAA is awaiting Congressional action before deciding a future course of action.

APPENDIX IV

- Concerning GAO's second and third recommendations, FAA will take action along the lines recommended. To the extent that misuse is known, the regions will reclaim donated land that is not being used or developed for the purpose conveyed and in accordance with the transfer agreement. Similar action will be taken with respect to grant acquired land. In this regard, the regions have already been instructed to review the cases cited in the report and take appropriate action. As a result, the 40 acres of unused land at Hatch, New Mexico, has been returned to the Federal Government and additional actions are in process.

- Regarding the fourth and fifth recommendations, the regions are required to follow established program policies and procedures. As a practical matter the regions determine the extent to which the programs will be implemented. They must weigh benefits against costs and provide the resources. Unless resources are specifically designated for a particular program by Congress or the Administrator, the regions are free to use available resources in a manner which they believe best meets the safety mission of the agency and the needs of the region.

- Concerning the sixth recommendation, we plan to take action to improve records on the status of Federal interest in airport lands. During fiscal year 1981, the FAA plans to update the "List of Public Airports Affected by Agreements with the Federal Government." In this updating, strong emphasis will be placed on the regions to check the actual obligating document to verify land status. Additional emphasis will be given to updating regional files with the actual obligating documents and land usage.

(945358)